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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,592	12/28/2000	William E. Illidge	71493-841/jpw	4828
26123	7590	06/15/2005	EXAMINER	
BORDEN LADNER GERVAIS LLP WORLD EXCHANGE PLAZA 100 QUEEN STREET SUITE 1100 OTTAWA, ON K1P 1J9 CANADA			CHANG, RICHARD	
		ART UNIT		PAPER NUMBER
		2663		
DATE MAILED: 06/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/749,592	ILLIDGE ET AL.
	Examiner Richard Chang	Art Unit 2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12/08/2004.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-45 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4, 10-13, 19-22, 27-30 and 35-45 is/are rejected.  
 7) Claim(s) 5-9, 14-18, 23-26 and 31-34 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments and Amendment***

1. Applicant's arguments and amendments with respect to claims 1-4, 10-13, 19-2, 27-30 and 35-45 have been fully considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 10-13, 19-2, 27-30 and 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,347,234 ("Czaja et al.") in view of US patent 6,111,866 ("Kweon et al.").

Regarding Claims 1, 10, 19, 27, 35 and 37, Czaja et al. teach an advanced method and 2G-3G CDMA systems for forward link inter-generation soft handoff between second generation (CDMA 2G non high-speed data service option as in IS-95 standard) and third generation (CDMA 3G for high-speed data service option as IS-2000 standard) (see Fig. 1, Col. 4, lines 12-30) having a base station controller (BSC, 121), a mobile station (MS, 124) and a plurality of base station transceivers (BTS, 122/123) with at least one BTS (122) providing an area of non-high-speed data coverage (10/12,

CDMA 2G coverage area) and at least one BTS (123) providing an area of high-speed data coverage (14, CDMA 3G coverage area) (see Fig. 12, Col. 8, lines 25-43), a method for switching a high-speed data packet data call (CDMA 2G coverage service option) to a non-high-speed data circuit switched data call (CDMA 3G coverage service option) or vise versa, the method comprising the steps of: identifying that the MS (124) is exiting an area of high-speed data coverage (CDMA 3G coverage area) and entering an area of non-high-speed data coverage (CDMA 3G coverage area) or vise versa (See Fig. 12, Col. 8, lines 12-43).

Czaja et al. teach substantially all the claimed invention but did not disclose expressly the particular application involving limitations of "negotiating service options between the MS and the BSC" and "switching service independent of any physical layer mechanism".

Kweon et al. teach a method of CDMA data services wherein negotiation and selection (switching) of service options between the MS and the BSC are at the protocol level independent of lower level physical layer mechanism (See Fig. 5, Col. 5, lines 32-62).

A person of ordinary skill in the art would have been motivated to employ Kweon et al. in Czaja et al. in order to obtain a method and CDMA systems for forward link inter-generation 2G and 3G CDMA data services and to take advantage of negotiating and selecting service options between the MS and the BSC at the protocol levels and independent of lower level physical layer mechanism in claims 1, 10, 19, 27, 35 and 37,

The suggestion/motivation to do so would have been to negotiate and select service options between the MS and the BSC at the protocol levels and independent of lower level physical layer mechanism, as suggested by Kweon et al. in Fig. 5, Col. 5, lines 32-62. At the time the invention was made, therefore, it would have been obvious to one of ordinary skill in the art to which the invention pertains to combine Kweon et al. with the Czaja et al. to obtain the inventions specified in claims 1, 10, 19, 27, 35 and 37.

Regarding claims 2, 11, 20, 28, 36 and 38-39, Czaja et al. further teach that the area of high-speed data coverage is an area of IS-2000 (3G CDMA) coverage and the area of non-high-speed data coverage is an area of IS-95 (2G CDMA) coverage (Col. 6, lines 14-36), thus those are rejected with the same rationale applied against claims 1, 10, 19, 27, 35 and 37 respectively above.

Regarding claims 3, 12, 21 and 29, Czaja et al. further teach the step of negotiating service options between the MS (124) and the BSC (121) comprises the BSC (121) proposing to the MS (124) that the existing high-speed data packet data (CDMA 3G) service option be ended and a new non-high-speed data circuit switched data (CDMA 2G) service option be connected (Col. 6, lines 14-36), thus those are rejected with the same rationale applied against claims 1, 10, 19 and 27 respectively above.

Regarding claims 4, 13, 22 and 30, Czaja et al. further teach that the 2G-3G System determining whether the MS (124) can accept the service option change (See Fig. 1, Col. 4, line 41 - Col. 5, line 28), thus those are rejected with the same rationale applied against claims 1, 10, 19 and 27 respectively above.

4. Claims 40-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent No. 6,567,666 ("czaja et al.") in view of patent 6,111,866 ("Kweon et al.") and No. 6,747,964 ("Bender").

Regarding claim 40-45, in the previous action items 2, Czaja et al. and Kweon et al. teach substantially all the claimed invention but did not disclose expressly the particular application involving limitations of "Computer-readable media embodying a program of instructions executable by a computer to perform a method for switching between a high-speed data packet data call and a non-high-speed data circuit switched data call in a CDMA communication System"

Bender teaches a novel and improved method and apparatus for high data rate transmission in a wireless CDMA communication system wherein the key functional component ML-PPP processor 36 may be implemented with a microprocessor having computer readable memory for storing software instructions to perform the multi-link aggregation and separation (computer-readable media embodying a program of instructions executable ... switched data call in a CDMA) (See Fig. 3, Col. 5, lines 9-65).

A person of ordinary skill in the art would have been motivated to employ Bender in Czaja et al. and Kweon et al. in order to obtain a CDMA system and a method to softly switch calls between CDMA 3G data service coverage and CDMA 2G data service coverage and to take advantage of an implementation by storing software instructions in computer readable memory associated with the main processor to perform the key functions in claims 40-45.

The suggestion/motivation to do so would have been to accommodate a CDMA system and a method to softly switch calls between CDMA 3G data service coverage and CDMA 2G data service coverage and to take advantage of an implementation by storing software instructions in computer readable memory associated with the main processor to perform the key functions in claims 40-45. At the time the invention was made, therefore, it would have been obvious to one of ordinary skill in the art to which the invention pertains to combine Bender with Czaja et al. and Kweon et al. to obtain the inventions specified in claims 40-45.

***Allowable Subject Matter***

5. Claims 5-9, 14-18, 23-26 and 31-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if no art rejection can be applied.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Chang whose telephone number is (571) 272-3129. The examiner can normally be reached on Monday - Friday from 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (571) 272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*rlc*  
rkc

Richard Chang  
Patent Examiner  
Art Unit 2663

*Ricky*  
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PRIMARY EXAMINER

9/12/05